

Builders, Inc. v. John Hanson Savings Bank, F.S.B. (In re Serra Builders, Inc.), 970 F.2d 1309, 1311 (4th Cir. 1992). Prior to the dismissal of an appeal, however, the court should consider the following factors: (1) bad faith or negligence on the part of the appellant; (2) give the appellant notice and an opportunity to explain the delay; (3) consider whether the delay had any possible prejudicial effect on other parties; or (4) indicate that the court considered the impact of the sanction and available alternatives. *Id.*

The Court finds that Appellant's failure to timely file and serve a designation of the record and statement of issues to be presented on appeal, while perhaps not in bad faith, is certainly negligent. As noted above, Appellant was given notice and an opportunity to explain the delay but failed to do so. The third prong of the *Serra Builders* test is satisfied because the Trustee in the case before the United States Bankruptcy Court for the District of South Carolina (Spartanburg), is unable to administer and close the bankruptcy estate until this appeal is resolved. Finally, under the fourth prong, dismissal is appropriate because any lesser sanction would have the perverse result of rewarding Appellant for the failure to comply with Bankruptcy Rule 8009. If this Court imposes any sanction other than dismissal, it will countenance Appellant's "abuse [of] the judicial process by creating a procedural delay without any real threat of penalty." *In re Fitzsimmons*, 920 F.2d 1468, 1474 (9th Cir. 1990).

Consequently, this appeal is dismissed with prejudice because the record establishes that Appellant failed to comply with mandatory provisions for prosecuting the appeal and dismissal is warranted.

IT IS SO ORDERED.

Signed: July 25, 2016



Frank D. Whitney
Chief United States District Judge

